

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

APRIA HEALTHCARE, INC.¹

Employer

and

Case 6-RC-12637

GENERAL TEAMSTERS, CHAUFFEURS AND
HELPERS LOCAL NO. 249 A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTIONS

The Employer, Apria Healthcare, Inc. (herein referred to as “Apria” or “the Employer”), is engaged in the business of supplying and delivering oxygen and healthcare equipment to customers in various locations throughout the United States. Solely at issue herein are Apria’s Sewickley, Pennsylvania, and Canonsburg, Pennsylvania, facilities, where it employs a total of about 24 employees. The Petitioner, General Teamsters, Chauffeurs and Helpers Local No. 249 a/w International Brotherhood of Teamsters (herein referred to as “the Union”), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time Patient Service Technicians, Clinical Service Technicians, Transportation Leads, Delivery Technicians, Warehouse Clerks, Senior Warehouse Clerks and Cleaning Technicians employed by the Employer at its Sewickley, Pennsylvania and Canonsburg, Pennsylvania facilities; excluding all office clerical employees and guards, professional employees and supervisors as defined in the

¹ The Employer’s name appears as amended at the hearing.

Act, and all other employees.² A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the following issue: Whether the above-described unit of employees employed only at the Sewickley and Canonsburg, Pennsylvania facilities, or branches, (herein referred to as “Sewickley” and “Canonsburg” respectively) is appropriate.

While there is no disagreement between the parties as to the composition of the requested unit,³ the Employer contends that the scope of the petitioned-for unit is not appropriate. The Employer argues that the appropriate unit(s) should consist of either separate units at the Employer’s Sewickley and Canonsburg branches, or in the alternative, a single multifacility unit including all of the employees in the petitioned-for classifications throughout the entire Western Pennsylvania region, which is comprised of 31 branches. The Petitioner, contrary to the Employer, seeks to represent the employees at two of the branches within the Western Pennsylvania region as one unit. The unit sought by the Petitioner has approximately 24 employees, while the units submitted to be appropriate by the Employer would include anywhere from about seven employees to possibly several hundred employees.⁴

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that a multifacility unit consisting of employees from only the Sewickley and Canonsburg branches is not appropriate in scope. Rather, I find that each branch constitutes a separate appropriate unit. Accordingly, I have directed elections

² The unit description appears as amended at the hearing.

³ The unit description includes a classification of cleaning technician, but, at the present time, there are no employees working as cleaning technicians at either branch at issue herein.

⁴ This number is an approximation inasmuch as the Canonsburg branch, which is smaller than the Sewickley branch, has about seven employees, but the record does not reflect the total number of bargaining unit employees employed by the Employer in the 31 branches within the region.

in two separate units; the unit in Sewickley consisting of approximately 17 employees and the unit in Canonsburg consisting of approximately seven employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that support my conclusions on the issue.

I. OVERVIEW OF OPERATIONS

The Employer operates a business of supplying and delivering oxygen and medical equipment to private residences as well as to hospitals, nursing homes and other health care facilities throughout the United States. There are currently about 540 branches operated by the Employer throughout the United States. The Employer's operations are divided into three divisions, each consisting of about one-third of the country. Each division is subdivided into regions, comprised of groups of states. The eastern division of the Employer's operations has five regions. One of these regions is referred to as the Western Pennsylvania region, with its offices located in Canonsburg, Pennsylvania (herein referred to as "WPA"). This region covers the states of Ohio, West Virginia, Kentucky and the western half of Pennsylvania. Within WPA, the Employer has 31 branches. The number of employees employed at a branch varies widely; one branch in Kentucky only has three employees, while Sewickley has about 17 bargaining unit employees.⁵

The overall operations of the Employer are the responsibility of its Chief Operating Officer, Larry Mastrovich, whose office is located at the Employer's corporate headquarters in Lake Forest, California. Reporting directly to Mastrovich are Divisional Vice Presidents of Sales and Divisional Vice Presidents of Operations. The Eastern Divisional Vice President of Operations is Tami Salley. Each region within the division has its own management structure.

⁵ The record indicates that there are other classifications of employees at each branch who are not included in the requested bargaining unit. These include clinical employees, such as various classifications of respiratory therapists, as well as salepersons. The number of non-bargaining unit employees at each location is not reflected in the record.

One of the management positions reporting to Salley is the Regional Vice President of Operations for WPA, Dave Sears. Each region also has its own Human Resources coordinator, who each report to a divisional Human Resources coordinator. Within every region, each branch has a branch manager, some of whom oversee the operations at more than one branch. Sewickley and Canonsburg are both managed by the same branch manager, Robert Kohonoski.⁶ The branch managers report to the regional Vice President of Operations.

The Employer has several branches that provide services to the area in and around Pittsburgh, Pennsylvania. These include branches located in Sewickley, Canonsburg, Monroeville, Uniontown, Butler, and Greensburg, Pennsylvania, and Triadelphia, West Virginia. In about October 2007, the Employer carved out a portion of the geographic territory of Sewickley as well as a small part of Triadelphia's territory, and formed a new branch in Canonsburg.⁷ All of the employees hired to work in Canonsburg transferred from Sewickley, and the trucks and equipment for Canonsburg were moved primarily from Sewickley.⁸

The Sewickley branch is located in a large building within an industrial park. It houses a large warehouse where equipment is stored and repaired, as well as supervisory offices, a dispatch office, respiratory therapists' offices, an employee break room and several loading docks. There is a large tank located outside of the building, from which oxygen cylinders are filled, and an area where trucks are parked when not in use.

Approximately 17 bargaining unit employees work out of the Sewickley branch, including clinical service technicians (CSTs), patient service technicians (PSTs), delivery technicians (DTs), a transportation lead, a senior warehouse clerk and warehouse clerks. The

⁶ At the hearing, the parties stipulated, and I find, that Kohonoski is a supervisor within the meaning of Section 2(11) of the Act inasmuch as he has the authority, inter alia, to hire employees.

⁷ Originally, Canonsburg was the site of a branch of the Employer's operations. The Employer then moved that branch to Sewickley.

⁸ The record indicates that one truck was moved from Triadelphia to Canonsburg, and one employee from Triadelphia temporarily worked for one week in October 2007 at Canonsburg. All of the rest of the employees, equipment and trucks that were relocated in Canonsburg came from Sewickley.

branch manager at Sewickley is Robert Kohonoski. There is a transportation supervisor, Scott Caldwell, who oversees the deliveries and the work performed by the PSTs, CSTs, and DTs. In addition, the warehouse supervisor, Randy Schuler, oversees the functioning of the warehouse and the work of warehouse employees.⁹

The Canonsburg branch is located in a large building within a fenced-in area. There are several loading docks adjacent to the building. About three-quarters of the building houses the WPA regional staff and supplies, including the regional call center, repair center, customer service center and distribution center. The remainder of the building houses the Canonsburg branch's employees and supplies. Currently, there are no management or supervisory personnel located permanently at the Canonsburg branch. There are approximately seven bargaining unit employees assigned to work at Canonsburg, presently including DTs, PSTs and one transportation lead.

As previously noted, the call center, also called the Logistics Center of Excellence or LCE, is located in the building at Canonsburg. Customers who call the Employer to order a pickup or delivery of equipment speak to the employees in the regional LCE. The LCE plans the routes for all of the individual drivers throughout the branches in WPA. These routes are sent to the individual branches each day, and distributed to the individual drivers by the transportation supervisors and/or branch managers. There is one on-call dispatcher who distributes assignments for both Canonsburg and Sewickley after the LCE center closes around 6:00 p.m. Sewickley has two on-call drivers each day, and Canonsburg has one.

The bargaining unit employees who are DTs, PSTs and CSTs drive the Employer's trucks, stopping at each customer on the route assigned.¹⁰ These employees pick up

⁹ At the hearing, the parties stipulated, and I find, that Caldwell and Schuler are supervisors within the meaning of Section 2(11) of the Act inasmuch as they both have the authority, inter alia, to responsibly direct the work of employees and to effectively recommend discipline.

¹⁰ The various classifications are based on experience and seniority. Thus, a driver who is classified as a DT does not possess the skills of the PSTs and CSTs. The CSTs are the most skilled classification of driver and possess the most seniority. Also, the DTs do not generally possess a commercial driver's license, which is required of the PSTs and CSTs.

equipment that is no longer needed by the customer, and/or deliver and set up new equipment ordered by the customer. They may deliver such items as wheelchairs, hospital beds, ventilators, bathroom equipment, and so forth. These drivers also refill oxygen cylinders for the customers. The transportation leads spend much of their time in an office in their respective branches, assisting with customers' calls, dispatching drivers and troubleshooting problems. They also drive a truck to make deliveries when necessary.

The drivers are on staggered schedules, some starting early in the morning, and others starting later in the morning or in the afternoon. These schedules are determined by the transportation supervisor and the branch manager, based on the routes sent from the LCE each day. The drivers generally make 25 – 30 stops at customer locations during the day. The drivers who do not begin their routes until the afternoon are often assigned only a few stops initially, and then are called during the shift to add more stops. The drivers all carry Nextel telephones to communicate with their dispatcher and with each other. The on-call drivers for each branch can also be called out in the evening or on the weekend, as needed. There are occasions when an on-call driver from Sewickley will be asked to make a delivery in the Canonsburg area, particularly if the driver lives near that area and is leaving from his home.

The warehouse employees service and maintain the equipment. They check over the equipment and the oxygen tanks before these items are taken out and after they are brought back. They also fill the oxygen tanks for the drivers. The warehouse employees generally load and unload the trucks, sometimes with assistance from the drivers. The senior warehouseman is primarily in charge of the breathing equipment. The warehousemen work a daylight schedule.

Because Canonsburg was only started as a separate branch in October 2007, the operation there is still evolving. Kohonoski will continue to act as the branch manager for both Sewickley and Canonsburg. In fulfilling this role, Kohonoski maintains an office both at Sewickley and at Canonsburg, and spends a substantial amount of his time each week at each of these locations. Caldwell, the transportation supervisor at Sewickley, has also been acting in that role at Canonsburg. However, the Employer has assigned Ed Fundakowski to be the

transportation supervisor at Canonsburg.¹¹ Currently, Fundakowski is transportation supervisor at the Uniontown branch. He has already started working at Canonsburg one day a week, and will transfer there full-time as soon as his replacement is hired in Uniontown.¹² Canonsburg has also experienced a shortage of equipment during this startup period, and has had to borrow equipment from Sewickley at various times. It is anticipated that the borrowing of equipment will diminish as Canonsburg becomes more established.

Each branch has its own employee meetings, usually once a week. There have only been a few meetings with both branches, and these occurred early in the formation of the Canonsburg branch. While the on-call drivers for each branch are sometimes assigned to make stops in the other branch, this usually occurs after normal working hours. Consequently, there is very little interaction with the employees at the other branch. About three of the Sewickley drivers have been given temporary assignments in the Canonsburg delivery area from time to time. It does not appear that any Canonsburg drivers have been given temporary assignments outside of the Canonsburg area. There is also evidence of drivers from one branch being temporarily assigned to other branches, such as from Sewickley to Butler and from Triadelphia to Canonsburg.¹³ The frequency of these cross-branch temporary assignments from Sewickley to Canonsburg has declined the longer the Canonsburg branch has been functioning.

When there are job openings, the position is usually physically posted within the branch, but it is also publicized regionally on a monthly basis. There have been numerous transfers between branches throughout the region on a permanent basis. There is an employee handbook for all of the Employer's employees throughout the United States. The employees all

¹¹ Once Fundakowski is working full-time in Canonsburg, he will also be responsible for the maintenance of the trucks there. This function is presently being performed by Caldwell.

¹² At the hearing, Kohonoski testified that the hiring of Fundakowski's replacement in Uniontown was imminent and that, following a two to three week transition period, Fundakowski would begin working in his position in Canonsburg on a full-time basis.

¹³ The record also reflects examples of drivers in other branches in the region being assigned to work temporarily at a different branch.

wear uniforms similar to those worn by employees throughout the United States. The trucks bear the Employer's name, as well as the location of the branch.

Each branch is considered a separate cost center. Each individual branch receives its budget for the year from the corporate offices in California, and the branch manager can offer merit raises to the branch employees within a range determined by corporate management. The branch manager, with the assistance of the branch supervisors, including the transportation supervisors, makes the hiring, firing, discipline and scheduling decisions for the branch. They also provide training for new employees¹⁴ and evaluate the branch employees.

II. ANALYSIS

As described previously, the Union herein has petitioned for a unit consisting of various employees located at Sewickley and Canonsburg to be represented in one unit. The Employer, on the other hand, contends that the two-branch unit proposed by the Union is not appropriate, and that the appropriate unit(s) must either consist of each branch as a separate unit, or include the entire WPA region consisting of 31 branches.

It is well established that the Board considers the following factors when determining whether a petitioned-for multifacility unit is appropriate: employees' skill and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. Clarian Health Partners, 344 NLRB 332, 334 (2005); Laboratory Corp. of America Holdings, 341 NLRB 1079, 1082 (2004); Alamo Rent-A-Car, 330 NLRB 897 (2000). In the instant case, I find that the record fails to establish that Sewickley and Canonsburg share such a separate and distinct community of interest that a two-branch unit would be appropriate herein.

I note that, in the instant case, the Employer has an organizational structure consisting of three divisions within the United States. Each of the three divisions is divided into multi-state

¹⁴ The corporate office also provides some online training for new employees.

regions, and each region is divided into individual branches. Thus, the requested unit consisting of two branches together does not comport with any organizational grouping of the Employer's operations. See, Laboratory Corp. of America Holdings, supra; Bashas', Inc., 337 NLRB 710, 712 (2002).

With regard to employees' skills and duties, the employees in the requested unit have the same skills and duties as the employees in all of the other branches throughout the entirety of the Employer's operations. Thus, there is nothing unique about the skills and duties of the employees located in Canonsburg and Sewickley that would support a finding that they have a distinct community of interest apart from the rest of the Employer's employees at other branches.

Similarly, the employees' terms and conditions of employment are not unique to the two branches requested in the petition. Rather, corporate management sets the policies for the employees throughout the entire country. There is one employee handbook for all employees setting forth the company's policies and benefits. All employees wear the same types of uniforms and drive the same types of trucks. The corporate office determines a range of wage rates for each classification. Consequently, the record fails to establish any facts to indicate that the terms and conditions of employment of the employees in these two branches are distinct from the rest of the Employer's locations.

With regard to employee interchange, there is evidence that some employees from Sewickley have been assigned to work temporarily in Canonsburg. Specifically, PST Mark Gilbert has been assigned numerous times to make deliveries in the Canonsburg area and, on occasion, to fill in as a driver for a day in Canonsburg. Gilbert lives close to the Canonsburg area and thus has been assigned on-call deliveries from time to time. Gilbert testified that these assignments in Canonsburg had decreased over time. Another PST, Jeff Kapopoulos, has also received some on-call assignments in Canonsburg, but these have only occurred a few times,

and were during weekends.¹⁵ There is no evidence that any Canonsburg employees have been assigned to work on any basis in Sewickley.

With regard to these examples of temporary employee interchange, I note that the only record evidence of any significant temporary interchange is that which is assigned to PST Mark Gilbert, and that the amount of such interchange has been decreasing as the Canonsburg branch becomes more established. I also note that most of the instances of temporary interchange occur either after regular working hours or on weekends. Consequently, there would be minimal or no interaction with the employees at the Canonsburg branch during those assignments.

The record further reflects that there has been temporary interchange between the Sewickley and Butler branches, and between the Triadelphia and Canonsburg branches. There is also evidence that other branches within WPA have experienced temporary interchanges on occasion. Thus, I find that while there is some temporary interchange of Sewickley employees to work in Canonsburg, there is also temporary interchange with and among other branches of the Employer's operations. As a result, this factor does not support a finding that Canonsburg and Sewickley share a community of interest distinct from other branches.

In its brief, the Union contends that another example of employee interchange is the evidence that all of the drivers at Canonsburg had transferred from Sewickley. Thus, the Union asserts that this is an example of permanent interchange. I find this fact unpersuasive inasmuch as the Board has historically given little weight to permanent transfers from an existing facility to a newly-opened one. Alamo Rent-A-Car, supra at 898, citing White Castle System, Inc., 264 NLRB 267, 268 (1982) and J. L. Hudson Co., 155 NLRB 1345, 1348, fn. 9 (1965). Moreover, there were examples given of other permanent transfers between Sewickley

¹⁵ Kapopoulos testified that another driver, Frank Popowich, had also been assigned to work in the Canonsburg geographic area, but there was no additional evidence offered to indicate that this occurred, and how often this occurred.

and other branches, such as the transfer of employee Ed Brucker from Sewickley to Monroeville. Consequently, the fact that there were permanent transfers of Sewickley employees to start the branch in Canonsburg does not provide substantial support for the separate and distinct community of interest argument asserted by the Union.

The record reflects that there has been some functional integration between Sewickley and Canonsburg. In this regard, there is one branch manager who oversees the operation at both locations. Until recently, there was also one transportation supervisor who was responsible for the drivers and vehicles at both locations. There is one on-call dispatcher who gives out assignments on weekends and evenings to drivers from both Canonsburg and Sewickley. There is some evidence of shared equipment between the two locations as well.

I find it significant that much of this integration is a result of the initial start up of a new branch at Canonsburg. The record reflects that the Canonsburg branch will continue to be managed by branch manager Robert Kohonoski. However, this is not unique to these two branches; many other branches share a branch manager.¹⁶ As described previously, Ed Fundakowski has been assigned to be the transportation supervisor for Canonsburg, and is already working there one day a week. Fundakowski will work in Canonsburg full-time as the on-site transportation supervisor as soon as his replacement in Uniontown is chosen. While there is no record evidence that there will ever be a separate on-call dispatcher for each location, this fact alone does not weigh heavily in the analysis herein. The movement of equipment between the two branches also appears to be a result of the start up of the new branch in Canonsburg, and Branch Manager Robert Kohonoski testified that movement of equipment is expected to decrease over time.

With regard to geographic proximity, the two locations are 12 miles apart. While they are closer to each other than to any of the other branches in the Pittsburgh area, it is not so

¹⁶ The record indicates that there are nine branch managers in WPA who are responsible for more than one branch, and one of those individuals actually manages three branches.

close as to be a determining factor in this analysis. In Laboratory Corp. of America Holdings, supra at 1083, there were about 10 miles between the locations requested in the petitioned-for unit, and some of the other locations were about 25 miles from those. In that case, the Board found that such distances did not support a finding that the petitioned-for unit had a separate and distinct community of interest. Similarly, in both Clarian Health Partners, supra at 335, and Macy's West, Inc., 327 NLRB 1222, 1223 (1999), the Board found that geographic proximity was not sufficient to warrant a finding that the requested multifacility unit was appropriate.

When analyzing the centralized control of management and supervision, it appears that this factor also fails to support a finding that the requested two-branch unit is appropriate. As discussed previously, treating two branches as one unit does not comport with any organizational grouping of the Employer's operations. The Employer has divided its operations by divisions, each of which is divided into regions. Those regions are each divided into individual branches.

Although some branch managers, as in this case, oversee two branches, each branch is still a separate cost center and organizational unit. Aside from sharing the same branch manager, Sewickley and Canonsburg are considered independent units within the Employer's structure. Canonsburg will soon have its own transportation supervisor, and the branch manager, Robert Kohonoski, anticipates much less interchange of employees and equipment the longer Canonsburg is operating. All merit raises, hiring, firing, discipline and evaluations are decided by the branch management individually for each branch. Moreover, many policies are company-wide, inasmuch as the Employer, at the corporate level, provides uniforms, the employee handbook, and benefits. Thus, the record reflects that each branch manager has certain autonomy at the branch level and that corporate management sets certain company-wide policies applicable to all branches. However, there is no evidence that the Employer organizes its operations on the basis of two-branch units.

Finally, the factor relating to bargaining history does not support a finding that the requested unit is an appropriate one. There is no evidence that any of the Employer's employees, particularly those employees in the requested unit, have ever been represented by a labor organization.

Thus, I find that the petitioned-for employees at Sewickley and Canonsburg together do not share a community of interest separate and distinct from that shared with other employees in the petitioned-for classifications at other branches of the Employer's operations. Accordingly, I find that the petitioned-for multifacility unit limited to employees at Sewickley and Canonsburg together is inappropriate.

The Employer has asserted that an appropriate unit in this matter would consist of the petitioned-for classifications of employees in an individual branch, which accords with the Employer's administrative and organizational structure of its operations. The Union has indicated that if the petitioned-for multifacility unit is not found to be appropriate, there would still be separate appropriate branch units and that it would be willing to proceed to elections in two separate units, one at Sewickley and one at Canonsburg. Based on the discussion and analysis herein, and noting the parties' agreement on this issue, I find that the appropriate units in this matter consist of the petitioned-for employees at the separate branches located in Sewickley, Pennsylvania, and in Canonsburg, Pennsylvania.¹⁷ Accordingly, I shall direct two elections to be held, one in Sewickley and one in Canonsburg, to determine if the employees in the petitioned-for classifications wish to be represented by the Union in two individual and separate bargaining units.¹⁸

¹⁷ In the alternative, the Employer also asserted that a regional unit, including 31 branches in Kentucky, Ohio, West Virginia and half of Pennsylvania, would be an appropriate unit herein. Inasmuch as both the Employer and the Union agree on the appropriateness of separate branch units and are willing to agree to separate elections in the two branches, I need not decide the appropriateness of the region-wide unit proposed by the Employer.

¹⁸ I am administratively satisfied that the Petitioner possesses the requisite showing of interest in each of these bargaining units.

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

The appropriate unit at the Employer's Sewickley, Pennsylvania, branch is:

All full-time and regular part-time Patient Service Technicians, Clinical Service Technicians, Transportation Leads, Delivery Technicians, Warehouse Clerks, Senior Warehouse Clerks and Cleaning Technicians employed by the Employer at its Sewickley, Pennsylvania facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

The appropriate unit at the Employer's Canonsburg, Pennsylvania, branch is:

All full-time and regular part-time Patient Service Technicians, Clinical Service Technicians, Transportation Leads, Delivery Technicians, Warehouse Clerks, Senior Warehouse Clerks and Cleaning Technicians employed by the Employer at its Canonsburg, Pennsylvania facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act, and all other employees.

IV. DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. The employees will vote whether or not they

wish to be represented for purposes of collective bargaining by General Teamsters, Chauffeurs and Helpers Local No. 249 a/w International Brotherhood of Teamsters. The date, time and place of the elections will be specified in the Notices of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the elections are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit Lists of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to lists of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office separate election eligibility lists containing the full names and addresses of all the eligible voters in each respective unit. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make them available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, Two Chatham Center, Suite 510, 112 Washington Place, Pittsburgh, PA 15219, on or before **July 3, 2008**. No extension of time to file these lists will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election(s) whenever proper objections are filed. The lists may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies of each list, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notices.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001.¹⁹ This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **July 10, 2008**. The request may **not** be filed by facsimile.

Dated: June 26, 2008

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Two Chatham Center, Suite 510
112 Washington Place
Pittsburgh, PA 15219

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440-3325-0000

¹⁹ A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, www.nlr.gov, under "E-Gov." On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.